



## **AVON BOARD OF ZONING APPEALS MEETING AGENDA**

**MEETING DATE:** January 20, 2022  
**TIME:** 7:00 PM  
**PLACE:** 6570 E. US Hwy 36

1. Call to order
2. Roll Call/ Determination of Quorum
3. Election of Board Officers
4. Approval of Minutes: December 16, 2021
5. Request for Continuances or Agenda Modifications:
6. Old Business:

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### **7. New Business (Public Hearings)**

**SE 21-04 – Our Father’s House** -- Requests the approval of a special exception to allow for a place of worship in I-2 zoning district. The property is located at 8109 Kingston Street, Avon; is zoned I-2; and is located within the U.S. Hwy 36 Overlay District. **PETITIONER: Any Kult, Comer Law Office**

**SE 21-05 -- Orange Leaf Avon, Drive Thru** -- Requests the approval of a special exception to allow for a drive through in Tier One of the U. S. Hwy 36 Overlay District. The property is located at 7565 East U. S. Highway 36, Avon; is zoned C-2; and is located within the U.S. Hwy 36 Overlay District. **PETITIONER: Andy Kult, Comer Law Office**

**SE 21-06 – Elite Hand Car Wash at the Gatherings** -- Requests the approval of a special exception to allow for a car wash use within the I-2 district and in the Tier Two of the US Hwy 36 Overlay District. The property is located at 8403 East U. S. Highway 36, Unit C, Avon; is zoned I-2; and is located within the U.S. Hwy 36 Overlay District. **PETITIONER: Ben Comer, Comer Law Office**

**Other Business:** Signatures

**Public Comments:** (Public may comment on items NOT part of a public hearing)

**Adjournment**

**Next Meeting: February 17, 2022 at 7:00 p.m.**

Anyone who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a program, service, or activity of **Town of Avon**, should contact the **Town Administrative Offices** as soon as possible but no later than 48 hours before the scheduled event



## Minutes for the December 16, 2021 Town of Avon Board of Zoning Appeals Regular Meeting

I. **Call to Order– 7:00 PM**

II. **Roll Call/Determination of a Quorum –**

In attendance were board members: Anne Inman, Paul Guckenberger, Kathryn Ransburg, Marcus Turner, and Marci Taschler

Staff members in attendance included Senior Planner Ian Loera, GIS/Code Enforcement Planner Daniel Lorentz, Administrative Assistant Suzanne Hardy and Town Attorney Mitchell Ray.

III. **Consideration of Minutes –**

Paul Guckenberger made a motion to approve the minutes for the October 21, 2021 Town of Avon Board of Zoning Appeals Regular Meeting as presented. Kathryn Ransburg seconded. Motion was approved 5-0 by voice vote.

IV. **Requests for Continuances and Other Agenda Modifications – None**

V. **Old Business –**

**VAR 21-12 Harrington Pool –**

Mr. Loera presented his staff report. This was a request of variance of development standards of Chapter 8 Table 8-3 of the Town of Avon Zoning Ordinance for a reduction of the 10-foot setback requirement of the construction of a swimming pool to a 7-foot setback at 2141 Laurel Leaf Lane Avon, IN 46123. Mr. Loera presented that the petitioner had committed that they would install a landscape buffer along the adjoining property line if granted this variance. He presented the history of the property and the history of the case including the meeting that was held on October 21, 2021. Mr. Loera presented the site conditions of 2141 Laurel Leaf Lane and various letters received regarding the case. One letter received was from a neighboring property owner. Other letters were received by the petitioner who had 2 realtors write letters to the Town with their professional opinion that the variance would not substantially affect property values of the adjoining 2163 Laurel Leaf Lane property. Staff recommended approval given that they meet the condition of completing the landscape buffer as presented.

The petitioner, William Harrington of 2141 Laurel Leaf Lane, came up to speak. He expressed that a variance of 36 inches will not create a substantial difference. He spoke about the specifics of the proposed landscape buffer. The petitioner claimed that the neighbor would have better privacy with the landscape buffer. He claimed that he would not put in the landscape buffer if this variance was not granted. He made an assertion that the neighbor is simply against a pool in general. Board questioned about realtor letters and what the realtor's affiliations were with the petitioner.

Public Hearing was opened at 7:19 PM.

Robin Lewis of 2163 Laurel Leaf Lane expressed that her enjoyment of the property was an important factor to consider, and that it is not just about resale value of her property. She expressed they could've gotten realtors to say that it would have substantially adverse effects on their property. She expressed concerns that the pool would be very near to her home office.

Nathan Lewis of 2163 Laurel Leaf Lane expressed concerns about noise. He asserted that the next neighbor to move in could be even more noisy than the petitioner. Mr. Lewis expressed that they should not be the ones to bear the uncertainty of potential adverse effects nor should have to give up the setback in the petitioners adjoining side yard.

Public Hearing was closed at 7:23 PM.

Board questioned Town Attorney Mitchell Ray about whether or not it was appropriate to have a discussion with the remonstrators. Board asked remonstrators to share photos and explain further how they would be adversely affected by this variance.

The board discussed what constituted a practical difficulty at length. Town Attorney Mitchell Ray spoke to what constituted a practical difficulty.

Anne Inman made a motion to deny the petition having failed to meet the criteria for a variance of development standards. Paul Guckenberger seconded. The motion to deny the request passed 3-2 by roll call vote.

**VI. New Business – None**

**VII. Other Business**

**Signatures –**

**Waive Rules and Procedures –**

Town Attorney Mitchell Ray recommended that the Board waive its rules and procedures to add an item on the agenda. The item being the Electronic Public Participation Policy. Kathryn Ransburg made a motion to waive the Town of Avon Board of Zoning Appeals Rules and Procedures to add the Electronic Public Participation Policy to the Agenda. Paul Guckenberger seconded. Motion was passed 5-0 by roll call vote.

**Electronic Public Participation Policy –**

Kathryn Ransburg made a motion to amend the Town of Avon Board of Zoning Appeals Rules and Procedures to include the Electronic Public Participation Policy. Anne Inman seconded. The motion was passed 5-0 by roll call vote.

**VIII. Adjournment –**

Meeting was adjourned at 7:48 PM

**NEXT BOARD OF ZONING APPEALS MEETING  
January 20, 2022**

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**Marcus Turner – Chair**

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**Ian Loera – Secretary**

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**Ann Inman – Vice Chairman**

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**Paul Guckenberger**

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**Kathryn Ransburg**

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**Marci Taschler**





## SE 21-04 – Our Father’s House

Planning & Building Department Staff Report

January 13<sup>th</sup>, 2022

Board of Zoning Appeals, Public Hearing

Ian Loera, Senior Planner

<b>A. PETITION NUMBER</b>	<u>SE 21-04 OUR FATHER’S HOUSE</u>
<b>B. APPLICANT</b>	Andy Kult, Comer Law Office, LLC
<b>C. LOCATION</b>	8109 Kingston St, Unit C, Avon, IN 46123
<b>D. PARCEL SIZE</b>	2.51 acres
<b>E. LAND USE &amp; ZONING</b>	The subject property is located within Section 3 of the Avon Commerce Park industrial subdivision. It is zoned I-2 and is located within Tier Two of the US Highway 36 Overlay District.
<b>F. ACTION REQUESTED</b>	Requesting approval of a Special Exception to allow for a place of worship to be located within an I-2 zoning district.
<b>G. HISTORY</b>	<p>Site plan approval was granted to this development as part of SPR(F) 01-13 and the building was subsequently constructed in 2002.</p> <p>Our Father’s House moved in to the 8109 Kinston St tenant space around mid-November and has since been occupying the space without special exception approval.</p> <p>A similar situation occurred at the petitioner’s previous location, where Our Father’s House occupied the tenant space at 8399 E US Highway 36 without first obtaining a special exception for a Place of Worship located within an I-2 District. It was also reported that construction work was conducted without permits at that site as well. The petitioner has since moved out of that tenant space.</p>



#### H. STAFF COMMENTS

The petitioner is requesting approval of a Special Exception to allow for a place of worship located within an I-2 District.

Places of worship are only permitted within an I-2 zoning district by Special Exception per Table 27-1 Permitted Use Table.

The occupant, Our Father's House, moved into this tenant space in November of 2021. They are now retroactively applying for this special exception.

Photos on their Facebook page indicate that there was some structural work completed. It appears a stage was constructed along with some other improvements (possibly new partition walls). It is likely that these improvements will require a design release from the state and a local building permit.

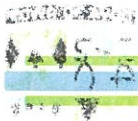
The petitioner has been informed that permits will be necessary for the work that was conducted, but our building department maintains that zoning approval must be obtained prior to issuance of a building permit and subsequent certificate of occupancy.

Until permits are applied for and approved, it is not possible to determine if the tenant space and the improvements comply with relevant building and fire codes as they relate to occupancy load, egress, and other life and safety standards. Therefore it is staff's recommendation that any approval be subject to the approval of any and all necessary permits and subsequent certificate of occupancy.

When accounting for the western parking area, staff has determined that there is adequate parking for the proposed use. *Avon Zoning Ordinance* Section 15-7.1 requires "1 space for every 5 seats in the main auditorium, sanctuary, nave, or similar place of assembly and other rooms which are to be occupied simultaneously."

According to the Our Father's House Facebook page, there are 144 seats within the main assembly area, thus requiring 29 parking spaces. The parking strip to the west of the building contains 32 parking spaces and the front parking lot contains 36 parking spaces. Staff feels this is adequate to serve the proposed use along with the other two tenant spaces.





	<p>Upon first glance it appears that the parking strip to the west is not included within the property boundaries of the subject site, however the petitioner has provided staff with a Parking Easement Agreement from 2006 which indicates that this area is to be designated a shared parking area. Staff finds this adequate to address parking concerns.</p> <p>Staff would also like to note that the approval of this use at this location would effectively prohibit any alcoholic beverage use within 200 feet from the walls of this establishment.</p> <p>Staff finds this use to be appropriate for this development and compatible with the surrounding uses, subject to staff's recommendation.</p>
<b>I. STATUTORY FINDINGS</b>	<p>The Board of Zoning Appeals shall approve, conditionally approve or deny Special Exceptions. A Special Exception may be approved under IC 36-7-4-918.2 only upon a determination in writing that it meets the criteria adopted in the community's local zoning ordinance – see Avon Zoning Ordinance, Section 4-4 (4) for the criteria, listed below:</p> <p><b><i>Note: the first 6 criteria must be met; the last 3 are additional items the Board may consider</i></b></p> <p><b>Criterion 1: The requested Special Exception is, in fact, listed as a Special Exception for the specific zoning district involved.</b></p> <p><i>"Yes. 'Places of worship' is listed as a special exception use for the I-2 zoning district within Table 27-1 (Permitted Use Table) of the Avon Zoning Ordinance."</i></p> <p><b>Staff Concurs with the Petitioner's assertion on the Finding.</b></p> <p><b>Criterion 2: Will the operation of the use be detrimental to or endanger the public's health, safety, or general welfare:</b></p> <p><i>"No, the proposed use will not be detrimental to the public's health, safety or general welfare."</i></p>



The structural work conducted along with the change of occupancy may pose a risk to the public's health, safety, and general welfare as it relates to occupancy load, egress, and other fire safety standards, however these issues will be addressed through the building permit process subsequent to the approval of this special exception. Staff therefore recommends that the approval of this petition be subject to the condition that the petitioner shall obtain all necessary permits and certificate of occupancy in order to verify compliance with all applicable building and fire code. With this condition attached, staff believes this criterion will be met.

**Criterion 3: Will the continued operation be injurious to the use and enjoyment of other properties in the immediate vicinity or substantially diminish or impair property values within the specific zoning district?**

*"No. The proposed use is not the type of use that will impair the use or enjoyment by nearby owners of their own property, nor diminish property values in the vicinity of the subject property."*

Staff concurs with the petitioner's assertion on the finding. The proposed use is harmonious to the surrounding uses and will not be injurious to the use, enjoyment, and property values of the neighboring properties.

**Criterion 4: Will the use be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water, sewer, and schools?**

*"Yes. The proposed use will be served adequately by all such facilities and services."*

Staff concurs with the Petitioner's assertion concerning this finding.

**Criterion 5: Will the use create excessive additional**





requirements at public expense for public facilities and services, or be detrimental to the economic welfare of the community or result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance?

*"No the proposed use will not create excessive additional requirements at public expense, nor will it be detrimental to the economic welfare of the community or result in any such destruction, loss, or damage."*

Staff concurs with the Petitioner's assertion concerning this finding.

**Criterion 6: Have there been previous appeals to the BZA for this property within the last year?**

*"There have been no BZA appeals for this property within the past year."*

Staff concurs with the Petitioner's assertion concerning this finding.

*In addition to the above criteria, the Board may consider the following:*

**Criterion 7: Does the proposed Special Exception meet the requirements and standards of this ordinance and its relationship and compatibility to adjacent properties and neighborhoods?**

*"Yes. The building within which the use will occur is existing and no outside improvements are anticipated. Further, the building and site are fully adequate to accommodate the use along with the uses of other tenants."*

Staff concurs with the Petitioner's assertion concerning this finding. Adequate parking as required by the Zoning Ordinance has been provided when accounting for the western parking easement as detailed in the attached Parking Easement



	<p><b>Agreement.</b></p> <p><b>Criterion 8: Does the proposed Special Exception make adequate provision for public services, provide adequate control over vehicular traffic, provide for and protect designated common open space and further the amenities of light and air, recreation and visual enjoyment?</b></p> <p><i>"Yes. Some of these items/issues are not applicable to the proposed use. In terms of traffic, the use will be maintained in a safe manner in terms of parking and traffic control."</i></p> <p><b>Staff concurs with the Petitioner's assertion concerning this finding.</b></p> <p><b>Criterion 9: Is the proposed Special Exception in accordance with the general objectives of the Comprehensive Plan?</b></p> <p><i>"Yes. The comprehensive plan generally suggests commercial/industrial use in the subject area. The proposed use is akin to commercial use with retail traffic, as opposed to residential or other similar uses."</i></p> <p><b>Staff concurs with the Petitioner's assertion concerning this finding.</b></p> <p><b>CONDITIONS</b></p> <p>Per IC 36-7-4-918.5, the Board may impose reasonable conditions as a part of the Board's approval. Staff recommends adding conditions related to the required building permits and certificate of occupancy for the structural work that was conducted.</p>
<b>J. RECOMMENDATION</b>	<p>Staff recommends approval of this petition subject to the following condition:</p> <ul style="list-style-type: none"><li>• The petitioner shall obtain all necessary building permits and Certificate of Occupancy for all construction work conducted.</li></ul>





## Exhibit A - Location Map





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Plat Reference: A portion of Lot 16, Avon Commerce Park, Section Three (3), Recorded December 9, 1997, in Plat Cabinet 4, Slide 161, Pages 1 and 2, in the Office of the Recorder of Hendricks County, Indiana; Lot Numbered Sixteen B (16B) in Avon, Commerce Park, Section Three (3), an addition to the Town of Avon, Hendricks County, Indiana, as per plat thereof recorded January 31, 2002, in Plat Cabinet 4, Slide 174, Page 2, in the Office of the Recorder of Hendricks County, Indiana; Lot Numbered Sixteen C (16C) in Avon, Commerce Park, Section Three (3), an addition to the Town of Avon, Hendricks County, Indiana, as per plat thereof recorded December 29, 2005, in Plat Cabinet 6, Slide 168, Page 1, in the Office of the Recorder of Hendricks County, Indiana; Lot Numbered Sixteen D (16D) in Avon, Commerce Park, Section Three (3), an addition to the Town of Avon, Hendricks County, Indiana, as per plat thereof recorded December 29, 2005, in Plat Cabinet 6, Slide 168, Page 1, in the Office of the Recorder of Hendricks County, Indiana

Prior Deed References: (1) Book 153, Pages 1914-1916, Instrument No. 1999-34743, in the Office of the Recorder of Hendricks County, Indiana; (2) Book ~~320~~ Pages ~~1697-1698~~ Instrument No. 2002-~~5604~~, in the Office of the Recorder of Hendricks County, Indiana; and (3) ~~Book XX~~, Pages ~~XX~~, Instrument No. 2005-\_\_\_\_\_, in the Office of the Recorder of Hendricks County, Indiana.

Instrument PG 1 OF 15  
200600000072

**AMENDMENT TO ACCESS, UTILITY AND DRAINAGE  
EASEMENT AGREEMENT/ PARKING EASEMENT AGREEMENT**

This Amendment to Access, Utility and Drainage Easement Agreement / Parking Easement Agreement ("Agreement") is made this 30<sup>th</sup> day of December, 2005 by and between Weston Group, LLC, an Indiana limited liability company ("Weston"), McCool Carpet, Inc., an Indiana corporation ("McCool"), and Bristol Properties II, LLC, an Indiana limited liability company ("Bristol") (hereinafter Weston, McCool and Bristol are sometimes collectively referred to as "Declarant").

**RECITALS:**

A. Weston and Bristol are parties to that certain Access, Utility and Drainage Easement Agreement dated January 31, 2002, recorded as Instrument No. 2002 - 5606, Book 320, Pages 1710-1719, in the Office of the Recorder of Hendricks County, Indiana ("Original Agreement").

B. Bristol continues to own the Bristol Property referenced in the Original Agreement. Weston no longer owns the entirety of the Weston Property referenced in the Original Agreement, and instead, now only owns that certain real estate described in attached Exhibit A, which is incorporated by reference ("Weston Property"), which Exhibit A replaces and supercedes in its entirety Exhibit A originally attached to the Original Agreement. Notwithstanding the change in definition of the Weston Property, the Benefitted Property, and the Benefitted Parties, as defined in the Original Agreement, remain unchanged.

C. McCool is the owner of certain land described in the attached Exhibit D, which is

15 + 4

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incorporated by reference ("McCool Property") (hereinafter Weston Property [as defined herein], McCool Property and Bristol Property are sometimes collectively also referred to as the "Irregular Benefitted Property").

D. Certain portions of Weston Property and Bristol Property more particularly described in Exhibit C to the Original Agreement, and defined therein as the "Easement Property," were the subject of the Original Agreement. In addition, certain additional portions of the Weston Property (as defined herein), more particularly described in attached Exhibit E, which is incorporated by reference ("Parking Property"), and Exhibit F, which is incorporated by reference ("Irregular Easement Property"), and are the subject of this Agreement.

E. To further the use and development of Benefitted Property, Weston and Bristol created certain easements as more particularly described in the Original Agreement. Herein, Weston desires to create additional non-exclusive easements for ingress, egress and parking upon the Parking Property, and create additional non-exclusive easements for ingress and egress upon the Irregular Easement Property, for the benefit of the owners of Weston Property, McCool Property and Bristol Property, or any part thereof, from time to time ("Owners") and their mortgagees, tenants, their tenants' employees, agents, customers, licensees, invitees, and others (collectively, "Irregular Benefitted Parties").

NOW THEREFORE, in consideration of their mutual promises, the covenants herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, and each intending to be legally bound, Weston, McCool and Bristol agree as follows:

1. Incorporation / Interpretation. The facts in the above recitals are adopted and hereby made a part of this Agreement. To the extent there is any conflict between this Agreement and the Original Agreement, the provisions of this Agreement shall control. The parties to this Agreement intend that this Agreement, and the rights granted herein, supplement and add to, and do not detract from, the rights, benefits and burdens granted in the Original Agreement.

2. Access Easement Grant. In addition to the easements granted and conveyed in the Original Agreement, Declarant hereby grants and conveys, for the mutual use and benefit of the Benefitted Parties, a perpetual non-exclusive easement over and across Declarant's respective interest in its portion of the Irregular Easement Property for the construction, maintenance, use, repair, and replacement of a roadway and related improvements (collectively, "Additional Roadway") for pedestrian and vehicular traffic for the purpose of providing ingress and egress to the McCool Property. Each Owner shall have the right to grant other easements along, over, across, and through that portion of the Irregular Easement Property owned by it and to use such portion of the Irregular Easement Property in any manner not inconsistent with the rights granted herein.

3. Parking and Access Easement Grant. In addition to the easements granted and conveyed in the Original Agreement, Declarant hereby grants and conveys, for the mutual use and benefit of the Benefitted Parties, a perpetual non-exclusive easement over and across Declarant's respective interest in its portion of the Parking Property for the construction, maintenance, use, repair

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and replacement of a roadway, parking area, and related improvements (collectively, "Parking Area") for pedestrian and vehicular traffic for the purpose of providing ingress and egress, and for providing non-exclusive parking for and to, the Bristol Property. Each Owner shall have the right to grant other easements along, over, across, and through that portion of the Parking Property owned by it and to use such portion of the Parking Property in any manner not inconsistent with the rights granted herein.

4. Manner of Installation and Repair. The Parking Area and the Additional Roadway (collectively, "Additional Easement Improvements") shall be installed, maintained, repaired, and replaced in such a manner that the use of the Additional Easement Improvements shall not be unreasonably impaired. The cost of installing Additional Easement Improvements shall be borne by the Owner who causes such installation to be done. If such installation results in or causes damage to then-existing Additional Easement Improvements and/or the Easement Improvements, such damage shall be repaired by and at the cost of the Owner who caused such Additional Easement Improvements or Easement Improvements to be installed or constructed. Each Owner shall promptly perform any maintenance, repair or replacement of the Additional Easement Improvements and the Easement Improvements rendered necessary by its act or omission, whether negligent, reckless or intentional, or by that of such Owner's agents, invitees, employees or tenants. Notwithstanding the foregoing, the Additional Roadway shall be constructed by McCool at McCool's sole cost and expense, in accordance with the requirements outlined on attached Exhibit G, which is incorporated by reference, and otherwise in a fashion acceptable to Weston (collectively "Additional Roadway Construction Requirements"). McCool shall fully and completely satisfy the Additional Roadway Construction Requirements, and complete construction of the Additional Roadway, no later than October 31, 2006.

5. Cost of Maintenance, Repair and Replacement. Except as otherwise provided in paragraph 4, (i) McCool shall bear the sole cost of maintaining, repairing and replacing the Additional Roadway, from the date of execution of this Agreement, and thereafter, and (ii) Bristol shall bear the sole cost of maintaining, repairing and replacing the Parking Area, from the date of execution of this Agreement, and thereafter, and (iii) the Owners shall share the cost of maintaining, repairing and replacing the Roadway in proportion to the respective acreage of the Irregular Benefitted Property then owned by each. The cost of maintaining the Roadway, the Additional Roadway and the Parking Area shall be deemed to include real estate taxes and assessments becoming a lien, after the date hereof, thereon. The Owners acknowledge that at the time of execution of this Agreement, there are no improvements to the Weston Property, and thus, the computation of the real estate taxes and assessments for the Roadway, the Additional Roadway and the Parking Area shall be based on the total square footage of each of the Roadway, the Additional Roadway, and the Parking Area, and the total square footage of the Weston Property. If and when improvements are made to the Weston Property, Owners shall, when examining and analyzing the real estate tax bill and assessments for the Weston Property, ignore the portion of the real estate tax bill and assessments allocable to improvements to the Weston Property, and instead, shall only allocate that portion of the real estate tax bill and assessments applicable to the real estate portion of the Weston Property, for purposes of computing the amount of real estate taxes and assessments to be paid in connection with and for the Roadway, the Additional Roadway and the Parking Area.



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McCool shall comply with and observe all laws, rules, ordinances, orders and regulations of federal, state and local governments relating to the Additional Roadway, Bristol shall comply with and observe all laws, rules, ordinances, orders and regulations of federal, state and local governments relating to the Parking Area, and Owners shall comply with and observe all laws, rules, ordinances, orders and regulations of federal, state and local governments with respect to the Roadway and Utility Lines. Each Owner shall be liable for the payment of its share of costs incurred during its period of ownership of land within the Irregular Benefitted Property; provided that no Owner shall be obligated hereunder for events occurring after said party ceases to be the record owner of Weston Property, McCool Property, and Bristol Property, respectively, and provided further that the obligations in this Agreement on a party shall be in rem and not in personam and shall only run against a party during such party's period of ownership.

6. Procedure for Effecting Maintenance, Repair and Replacement. The Owners shall use their best efforts to agree upon what maintenance, repairs or replacements are necessary to keep the Additional Easement Improvements and the Easement Improvements in good order, condition and repair. If the Owners fail to agree upon the necessity for, or the extent of, any such repair, maintenance or replacement, then the Owner(s) desiring to carry out such maintenance, repair or replacement may proceed to do so and may recover from the other Owners their respective shares of the reasonable costs of the work reasonably necessary to keep the Additional Easement Improvements and the Easement Improvements in good order, condition and repair. An action may be instituted in any court of competent jurisdiction in Hendricks County, Indiana, against the non-contributing Owners for the recovery of such costs, together with attorneys' fees and interest on any judgment obtained at the rate of ten percent (10%) per annum from the date of completion of the work sued upon until the date of payment of the judgment.

7. Public Liability Insurance / Indemnification. Each Owner shall purchase and maintain a commercial public liability insurance policy in an amount providing protection of not less than two million dollars (\$2,000,000) combined single limit for bodily injury and property damage. Such insurance shall, to the extent obtainable, cover the Easement Improvements located on such Owner's real estate (as contemplated in the Original Agreement), and in addition, the Additional Easement Improvements, and the exercise of the rights, benefits and burdens by the Irregular Benefitted Parties under this Agreement. McCool agrees to indemnify, defend and hold harmless Weston and Bristol from and against any and all liabilities, losses, claims, demands, liens, damages, penalties, fines, interests, costs and expenses of each and every kind, including but not limited to reasonable attorneys' fees, arising out of, relating to and/or in connection with this Agreement and/or the use of the Additional Roadway by McCool, its mortgagees, tenants, its tenants' employees, agents, customers, licensees, invitees, and others.

8. Appurtenance. This Agreement and the terms and provisions hereof shall be appurtenant to and run with the land comprising the Easement Property, the Parking Property and the Irregular Easement Property, as well as the Benefitted Property and the Irregular Benefitted Property, and shall be binding upon and inure to the benefit of the Owners from time to time of all or any part of the Weston Property, the McCool Property, and the Bristol Property.

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9. Miscellaneous. No Owner shall, without the prior written consent of all of the other Owners, which consent shall not be unreasonably withheld, erect or maintain any permanent structures or improvements upon the Easement Property, the Parking Property and/or Irregular Easement Property, or perform any act which would impair or interfere with any Owners' use and enjoyment of the easements and rights granted herein or in the Original Agreement. The Owners shall have the right to reasonable ingress and egress over, upon, across and under Benefitted Property and the Irregular Benefitted Property so as to be able to enjoy the benefits accorded by the easements granted herein and in the Original Agreement and for the purpose of access to the Easement Property, Parking Property and the Irregular Easement Property. Each party warrants that it has the right, power and authority necessary to execute this Agreement through its authorized officers, members and/or agents. The persons executing this Agreement on behalf of Weston, McCool and Bristol each warrant that they are duly authorized officers, members and/or agents of such party and have all power and authority necessary to execute this Agreement. This Agreement may only be terminated, modified or amended by a writing signed by all of the then Owners of the Weston Property, the McCool Property, and the Bristol Property, and no agreement or consent of any other persons shall be necessary for such termination and/or modification. The covenants in this Agreement shall be perpetual and shall be covenants that run with the land. None of the parties hereto shall be in default of this Agreement unless such party has failed to cure the default within 30 days after receipt of written notice from the party of such default or in the case of a nonmonetary default, such longer period as may be reasonable under the circumstances provided such party is diligently pursuing such cure. The easements granted herein shall inure to the benefit of and be binding upon the respective successors and assigns of Declarant. Disputes arising out of this Agreement shall be resolved by arbitration in accordance with the commercial rules of the American Arbitration Association, but with discovery as allowed by the then current Indiana trial rules. Judgment upon the award may be entered in any court of competent jurisdiction. The award of the arbitrator may include the prevailing party's reasonable attorneys' fees. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original.

IT WITNESS WHEREOF, Weston, McCool and Bristol have executed this Agreement as of the date first above written.

"WESTON"

WESTON GROUP, LLC

by

John S. Sebree, Member

STATE OF INDIANA )

COUNTY OF Marion )

SS:

Before me, a Notary Public in and for said County and State, personally appeared John S. Sebree, Member of Weston Group, LLC, who acknowledged execution of the foregoing Amendment to Access, Utility and Drainage Easement Agreement / Parking Easement Agreement for and on behalf of said limited liability company.

Witness my hand and Notarial Seal this 30 day of December, 2005.

Amanda Sue Fulwider  
Signature

Printed

County of Residence: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_



OFFICIAL SEAL  
AMANDA SUE FULWIDER  
NOTARY PUBLIC - INDIANA  
HENDRICKS COUNTY  
MY COMM. EXPIRES APRIL 29, 2007

"McCOOL"

McCOOL CARPET, INC.

by

Douglas R. McCool  
Douglas R. McCool, President  
vice -

STATE OF INDIANA )

COUNTY OF Hendricks ) SS:

Before me, a Notary Public in and for said County and State, personally appeared Douglas R. McCool, President of McCool Carpet, Inc., who acknowledged execution of the foregoing Amendment to Access, Utility and Drainage Easement Agreement / Parking Easement Agreement for and on behalf of said corporation.

Witness my hand and Notarial Seal this 30 day of December, 2005.



OFFICIAL SEAL  
AMANDA SUE FULWIDER  
NOTARY PUBLIC - INDIANA  
HENDRICKS COUNTY  
MY COMM. EXPIRES APRIL 29, 2007

Amanda Sue Fulwider  
Signature

Printed

County of Residence: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_



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"BRISTOL"

BRISTOL PROPERTIES II, LLC

by

John S. Sebree, Member

STATE OF INDIANA )  
COUNTY OF Hendricks ) SS:

Before me, a Notary Public in and for said County and State, personally appeared John S. Sebree, Member of Bristol Properties II, LLC, who acknowledged execution of the foregoing Amendment to Access, Utility and Drainage Easement Agreement /Parking Easement Agreement for and on behalf of said limited liability company.

Witness my hand and Notarial Seal this 30 day of December, 2005.



OFFICIAL SEAL  
AMANDA SUE FULWIDER  
NOTARY PUBLIC - INDIANA  
HENDRICKS COUNTY  
MY COMM. EXPIRES APRIL 29, 2007

County of Residence: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

Amanda Sue Fulwider  
Signature

Printed

#### CONSENT OF LENDER

Comes now First National Bank and Trust, Lender / Mortgagee of both the Weston Property (as defined above) and the Bristol Property (as defined above), and hereby consents to this Agreement and subordinates its Mortgages on both the Weston Property and on the Bristol Property to this Agreement, which Mortgage is dated \_\_\_\_\_, and recorded as \_\_\_\_\_ in the Office of the Recorder of Hendricks County, Indiana, and which Mortgage is dated \_\_\_\_\_, and recorded as \_\_\_\_\_ in the Office of the Recorder of Hendricks County, Indiana.

FIRST NATIONAL BANK AND TRUST

by  
its

\_\_\_\_\_  
\_\_\_\_\_

8

ABRISTOL@

BRISTOL PROPERTIES II, LLC

by

John S. Sebree, Member

STATE OF INDIANA )

COUNTY OF \_\_\_\_\_ )

SS:

Before me, a Notary Public in and for said County and State, personally appeared John S. Sebree, Member of Bristol Properties II, LLC, who acknowledged execution of the foregoing Amendment to Access, Utility and Drainage Easement Agreement /Parking Easement Agreement for and on behalf of said limited liability company.

Witness my hand and Notarial Seal this \_\_\_\_\_ day of December, 2005.

Signature

Printed

County of Residence: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

CONSENT OF LENDER

Comes now First National Bank and Trust, Lender / Mortgagee of both the Weston Property (as defined above) and the Bristol Property (as defined above), and hereby consents to this Agreement and subordinates its Mortgages on both the Weston Property and on the Bristol Property to this Agreement, which Mortgage is dated January 15, 2004, and recorded as #2004-12141 in the Office of the Recorder of Hendricks County, Indiana, and which Mortgage is dated June 16, 2005, and recorded as #2005-17883 in the Office of the Recorder of Hendricks County, Indiana.

FIRST NATIONAL BANK AND TRUST

by  
its

Cite Manarid  
First Vice President

9

STATE OF INDIANA )  
 ) SS:  
COUNTY OF Marion )

Before me, a Notary Public in and for said County and State, personally appeared Cito Mamasio, the <sup>First</sup> Vice President of First National Bank and Trust, who acknowledged execution of the foregoing Consent of Lender for and on behalf of said bank.

Witness my hand and Notarial Seal this 30 day of December, 2005.

Nichelle Kay Williams - Cook  
Signature  
Nichelle Kay Williams - Cook  
Printed

County of Residence: Marion  
My Commission Expires: May 9, 2009

This instrument was prepared by and after recording return to: Michael T. McNelis, Esq.,  
Mitchell Hurst Jacobs & Dick, LLP, 152 East Washington Street, P.O. Box 44911, Indianapolis,  
Indiana 46244-0911.

10

### LAND DESCRIPTION

Lot Numbered Sixteen C (16C) in Avon Commerce Park, Section Three (3), an addition to the Town of Avon, Hendricks County, Indiana, as per plat thereof recorded on December 29, 2005 in Plat Cabinet 6, Slide 108 Page 1 ~~X~~ in the Office of the Recorder of Hendricks County, Indiana.

EXHIBIT A



11

### LAND DESCRIPTION

Lot Numbered Sixteen D (16D) in Avon Commerce Park, Section Three (3), an addition to the Town of Avon, Hendricks County, Indiana, as per plat thereof recorded on December 29, 2005 in Plat Cabinet 6, Slide 108 Page 1, in the Office of the Recorder of Hendricks County, Indiana.

EXHIBIT D

12

LAND DESCRIPTION  
Proposed Ingress/Egress & Parking Easement

The following represents a proposed ingress and egress easement in Lot 16 of Avon Commerce Park, Section 3, as per plat thereof recorded in Plat Cabinet 4, Slide 161, Pages 1 and 2 in the Office of the Recorder of Hendricks County, said easement being more particularly described as follows:

Commencing at the southwest corner of said plat, also being the southwest corner of Lot 16 therein; thence North 89 degrees 30 minutes 27 seconds East along the south line thereof 268.45 feet to the southwest corner of Lot 16B of Avon Commerce Park, Section 3, as per plat thereof recorded in Plat Cabinet 4, Slide 174, Page 2 in the Office of the Recorder of said county; thence North 00 degrees 00 minutes 00 seconds West along the west line of said Lot 123.68 feet to the POINT OF BEGINNING; thence continue North 00 degrees 00 minutes 00 seconds West along said west line 337.00 feet; thence South 89 degrees 45 minutes 37 seconds West 37.25 feet; thence South 00 degrees 00 minutes 00 seconds East 336.84 feet; thence North 90 degrees 00 minutes 00 seconds East 37.25 feet to the POINT OF BEGINNING, containing 0.288 acres, more or less.

Note: Lot 16 also now described as Lot 16 C in the final subdivision plat of Lots 16 C and 16 D - Part of Lot 16, Avon Commerce Park Section 3, as per plat thereof recorded 12/29/05 as Instrument #2005-39493, Plat Cabinet 6, slide 108, page 1, in the Hendrick's County Recorder's office.

EXHIBIT

13

LAND DESCRIPTION  
Proposed Irregular Ingress/Egress Easement

The following represents a proposed ingress and egress easement in Lot 16 of Avon Commerce Park, Section 3, as per plat thereof recorded in Plat Cabinet 4, Slide 161, Pages 1 and 2 in the Office of the Recorder of Hendricks County, said easement being more particularly described as follows:

Commencing at the southwest corner of said plat, also being the southwest corner of Lot 16 therein; thence North 89 degrees 30 minutes 27 seconds East along the south line thereof 268.45 feet to the southwest corner of Lot 16B of Avon Commerce Park, Section 3, as per plat thereof recorded in Plat Cabinet 4, Slide 174, Page 2 in the Office of the Recorder of said county; thence North 60 degrees 00 minutes 00 seconds West along the west line of said Lot 460.68 feet to the POINT OF BEGINNING; thence South 89 degrees 45 minutes 37 seconds West 38.54 feet to the beginning of a tangent curve to the right having a radius of 85.50 feet and a central angle of 71 degrees 06 minutes 36 seconds; thence westerly and northwesterly along the arc of said curve 106.11 feet; thence North 37 degrees 45 minutes 41 seconds West 15.18 feet; thence South 90 degrees 00 minutes 00 seconds East 69.69 feet; thence North 57 degrees 03 minutes 34 seconds East 32.02 feet to the beginning of a non-tangent curve to the left having a radius of 205.00 feet, a central angle of 19 degrees 48 minutes 41 seconds, and a radial line passing through said point which bears South 55 degrees 17 minutes 07 seconds West; thence southeasterly along the arc of said curve 70.88 feet to the west line of said Lot 16B; thence South 35 degrees 28 minutes 26 seconds West along said west line 29.53 feet; thence South 00 degrees 00 minutes 00 seconds East along said west line 12.48 feet to the POINT OF BEGINNING, containing 0.174 acres, more or less

Note: Lot 16 also now known as Lot 16 C in the final subdivision plat of lots 16 C and 16 D - Part of Lot 16, Avon Commerce Park Section 3, as per plat thereof recorded 12/29/05 in Plat Cabinet 6, slide 108, page 1 in the Hendricks County Recorder's Office.

EXHIBIT F

14

**ADDITIONAL ROADWAY CONSTRUCTION REQUIREMENTS**

The southernmost driveway entrance of and to McCool Property, as shown on Site Development Plans for Avon Commerce Park – Lot 16D, prepared by Banning Engineering, dated October 6, 2005, revised per conditions of the Avon Plan Commission approval dated December 29, 2005 (Plan Commission approval for said plans was granted at their regular meeting on December 19, 2005). Said Site Development Plans contain specific information on numerous issues, including but not limited to pavement thickness, geometry, and curb design.

EXHIBIT G

Prescribed by the  
State Board of Accounts  
(2005)

15  
County Form 170

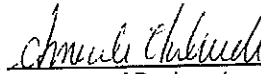
Declaration

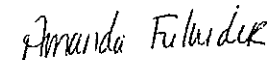
This form is to be signed by the preparer of a document and recorded with each document in accordance with IC 36-2-7.5-5(a).

I, the undersigned preparer of the attached document, in accordance with IC 36-2-7.5-5(a), do hereby affirm under the penalties of perjury:

1. I have reviewed the attached document for the purpose of identifying and to the extent permitted by law, redacting all Social Security numbers;
2. I have redacted. To the extent permitted by law, each Social Security number in the attached document.

I, the undersigned, affirm under the penalties of perjury, that the foregoing declarations are true.

  
\_\_\_\_\_  
Signature of Declarant

  
\_\_\_\_\_  
Printed name of Declarant





## SE 21-05 – Orange Leaf Drive-Thru

Planning & Building Department Staff Report

January 13<sup>th</sup>, 2021

Board of Zoning Appeals, Public Hearing

Ian Loera, Senior Planner

<b>A. PETITION NUMBER</b>	<u>SE 21-05 ORANGE LEAF DRIVE-THRU</u>
<b>B. APPLICANT</b>	Andy Kult, Comer Law Office, LLC
<b>C. LOCATION</b>	7565 E US Hwy 36
<b>D. PARCEL SIZE</b>	0.97 acres
<b>E. LAND USE &amp; ZONING</b>	The subject property is located at Lot 3 of the Harlan Center commercial development, is zoned C-2: General Commercial, and is located within Tier One of the US Highway 36 Overlay District. It is occupied by a two-tenant building comprised of commercial uses, both of which are fast food restaurants. The surrounding zoning and uses are predominantly commercial, with Industrial zoning located to the south of this development.
<b>F. ACTION REQUESTED</b>	Requesting approval of a Special Exception to allow for a drive-through use in Tier One of the US HWY 36 Overlay Zoning District.
<b>G. HISTORY</b>	<p>In 2001, the Harlan Development was rezoned from I-2 to C-2.</p> <p>Two variances were also approved for this lot in 2001 prior to the lot's development. <i>VAR 01-12(A) Harlan Development</i> was approved to allow parking within a required front yard. <i>VAR 02-12(B) Harlan Development</i> was approved to allow reduced parking standards of 33 spaces on Lot #3 of Harlan Center.</p> <p>Site plan approval was granted to this lot as part of SPR(P) 02-01 and SPR(F) 02-07, and the building was constructed in 2002. At the time the property was originally developed, this tenant space <i>did</i> include a drive-thru at the location currently proposed by the petitioner.</p>



	<p>Orange Leaf Frozen Yogurt moved into the unit in 2011, receiving permits for a remodel and signage in June and August of that year respectively. At the time of this remodel, Orange Leaf removed the drive-thru in order to add outdoor seating. This removed any legally established non-conforming status that the drive-through may have had at that time, thus now requiring a special exception for its redevelopment.</p>
<b>H. STAFF COMMENTS</b>	<p>The petitioner is requesting approval of a Special Exception to allow for a drive-through located within Tier One of the US Highway 36 Overlay District.</p> <p>Drive-Throughs are only permitted within Tier One of the US HWY 36 Overlay Zoning District by Special Exception per Table 27-1 Permitted Use Table.</p> <p>The drive-through is proposed to be located on the western façade of the building and will be oriented from north to south with the entrance opening to the north and presumably wrapping to the east.</p> <p>After having originally removed the drive-through from their tenant space at the time that they moved in to this tenant space, Orange Leaf would now like to reinstate this drive through in its original location. At the time that they removed their drive-through they lost any legally established non-conforming status they may have had, thus now requiring a special exception.</p> <p>The Zoning Ordinance requires six stacking spaces for restaurant uses. Each stacking space is required to be 20 feet in length and 12 feet in width. Additionally, all drive-throughs are required to include a 12 foot wide bypass lane to allow cars to exit at any time. The location of the proposed drive-thru <i>does</i> contain a bypass lane, but it is unclear if and how they will include the required stacking spaces. A preliminary look at the site indicates to staff that <i>if</i> six stacking spaces are able to fit within this site, they will almost certainly encroach into the front yard of the property. While no site plan of the proposed drive-through has been provided, staff has interpreted these details based upon the original layout of the drive-through, as it is depicted in aerial</p>





	<p>photography circa 2006.</p> <p>Section 23-13 states that, “All components of a drive-through, including stacking spaces, menu boards, and pick-up windows shall be located within the side or rear yards of a lot. In no case shall any of these drive-through components be located within the front yard, or in the case of a corner lot, shall not be located in the front yard that faces US Highway 36.” With that in mind, it may be necessary for the petitioner to apply for a waiver or otherwise rework their site plan before applying for a Development Plan Review.</p> <p>While these are important details to keep in mind, this is not a development plan review and these details may not necessarily affect the recommendation of the board regarding this petition.</p> <p>Staff finds the proposed use to be appropriate for the development and compatible with surrounding uses, subject to staff’s recommendation.</p>
<b>I. STATUTORY FINDINGS</b>	<p>The Board of Zoning Appeals shall approve, conditionally approve or deny Special Exceptions. A Special Exception may be approved under IC 36-7-4-918.2 only upon a determination in writing that it meets the criteria adopted in the community’s local zoning ordinance – see Avon Zoning Ordinance, Section 4-4 (4) for the criteria, listed below:</p> <p><b><i>Note: the first 6 criteria must be met; the last 3 are additional items the Board may consider</i></b></p> <p><b>Criterion 1: Is the requested use listed as a special exception for the specific zoning district involved as specified?</b></p> <p><i>“Yes. The use ‘Drive-through’ is listed as a Special Exception use within Tier 1 of the US Hwy 36 Overlay District, in the Permitted Use Table (Table 27-1) included in Chapter 27 of the Avon Zoning Ordinance.”</i></p> <p><b>Staff Concurs with the Petitioner’s assertion on the Finding.</b></p>



**Criterion 2: Will the proposed use be detrimental to or endanger the public's health, safety, or general welfare?**

*"No. Drive-throughs are a normal, common, and expected attribute of commercial development along US Hwy 36. The subject site will be designed so as to maintain safety with respect to the drive-through use."*

Staff concurs with the petitioner's assertion concerning this finding. This lot was originally developed to accommodate a drive through in this location.

**Criterion 3: Will the proposed use be injurious to the use and enjoyment of other properties in the immediate vicinity or substantially diminish or impair property values within the specific zoning district?**

*"No. The proposed drive-through will have no effect on the use or enjoyment of other properties in the immediate vicinity, nor impair property values. Drive-throughs are a normal attribute along US Hwy 36."*

Staff concurs with the petitioner's assertion concerning this finding. The neighboring tenant space, Subway, also includes a drive through.

**Criterion 4: Will the use be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water, sewer, and schools?**

*"Yes. The use will be served adequately by essential public facilities and services."*

Staff concurs with the Petitioner's assertion concerning this finding.

**Criterion 5: Will the proposed use create excessive additional requirements at public expense for public facilities and services, or be detrimental to the economic welfare of the**





community or result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance?

*"No. The use will not result in any such negative or detrimental effects."*

Staff concurs with the Petitioner's assertion concerning this finding.

**Criterion 6: Have there been previous appeals to the BZA for this property within the last year?**

*"There have been no previous appeals to the BZA for this property within the past year."*

Staff concurs with the Petitioner's assertion concerning this finding.

*In addition to the above criteria, the Board may consider the following:*

**Criterion 7: Does the proposed Special Exception meet the requirements and standards of this ordinance and its relationship and compatibility to adjacent properties and neighborhoods?**

*"Yes. The proposed drive-through will be designed in accordance with appropriate development standards, and the use will be compatible with existing commercial uses along US Hwy 36."*

Staff concurs with the Petitioner's assertion concerning this finding. While no site plan of the proposed drive-thru has been provided to staff at this time, verification of compliance with development standards will be verified through the Development Plan Review process.

**Criterion 8: Does the proposed Special Exception make adequate provision for public services, provide adequate control over vehicular traffic, provide for and protect**

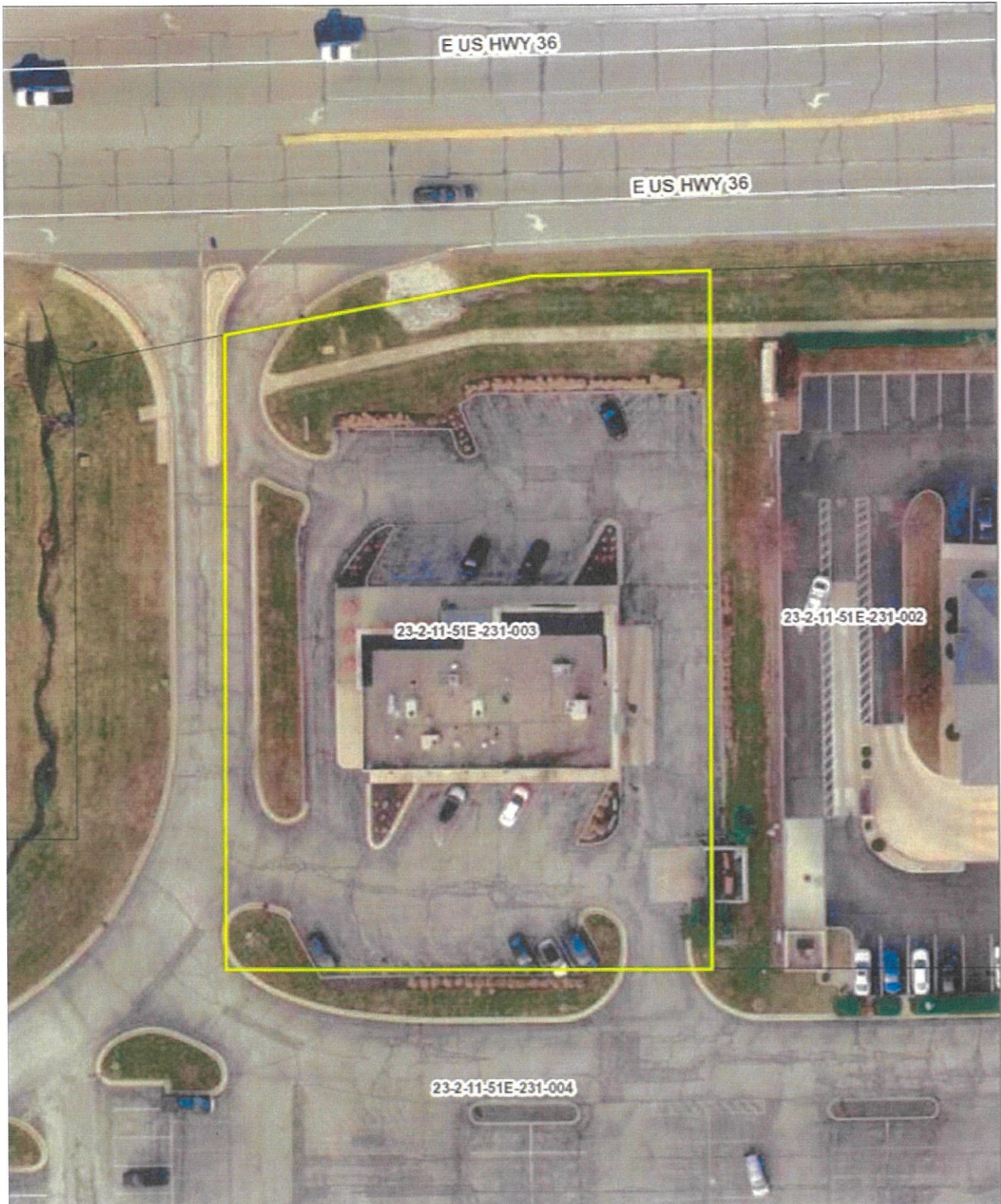




	<p><b>designated common open space and further the amenities of light and air, recreation and visual enjoyment?</b></p> <p><i>“Yes. While some of these issues do not arise relative to the proposed drive-through use, the subject site will be designed in a manner that accounts for safety of vehicular and pedestrian traffic on site.”</i></p> <p><b>Staff concurs with the Petitioner’s assertion concerning this finding.</b></p> <p><b>Criterion 9: Is the proposed Special Exception in accordance with the general objectives of the Comprehensive Plan?</b></p> <p><i>“Yes. The comprehensive plan proposes commercial use for the subject site, and the proposed drive through constitutes a normal attribute of commercial use along the US Hwy 36 corridor.”</i></p> <p><b>Staff concurs with the Petitioner’s assertion concerning this finding. The comprehensive plans indicates a future land use of “Neighborhood Retail” for this area. This proposed use is consistent with that designation.</b></p> <p><b>CONDITIONS</b></p> <p>Per IC 36-7-4-918.5, the Board may impose reasonable conditions as a part of the Board’s approval. Staff recommends adding conditions related to the proposed design of the drive-through and its subsequent Development Plan Review.</p>
<b>J. RECOMMENDATION</b>	<p>Staff recommends approval of this petition subject to the following condition:</p> <p>Approval is subject to the review and approval of a Development Plan Review petition in accordance with Section 4-8.3 of the Avon Zoning Ordinance.</p>



## Exhibit A - Location Map







## SE 21-06 – Elite Car Wash

Planning & Building Department Staff Report

January 13<sup>th</sup>, 2022

Board of Zoning Appeals, Public Hearing

Ian Loera, Senior Planner

<b>A. PETITION NUMBER</b>	<u>SE 21-06 ELITE CAR WASH</u>
<b>B. APPLICANT</b>	Ben Comer, Comer Law Office, LLC
<b>C. LOCATION</b>	8403 E US Highway 36, Unit C, Avon, Indiana 4612
<b>D. PARCEL SIZE</b>	2.08 acres
<b>E. LAND USE &amp; ZONING</b>	The subject property is located at Lot 2 of The Gatherings development and is zoned I-2: Light Industrial. It is also located within Tier 2 of the US HWY 36 Overlay Zoning District. The surrounding zoning is predominantly industrial, but does contain commercial zoning to the north and residential uses to the east.
<b>F. ACTION REQUESTED</b>	Requesting approval of a Special Exception to allow for a car wash use in an I-2 Zoning District <i>and</i> within Tier 2 of the US HWY 36 Overlay Zoning District.
<b>G. HISTORY</b>	<p>This location was originally occupied by the Carter Lumber Partnership of Indiana.</p> <p>In 2006 the site was subdivided into two lots per MIP 06-02. The northernmost lot was rezoned to C-2 per ZA 06-03, and the subject site remained I-2.</p> <p>At that time, approval of Development Plan Review, DPR 06-03, was obtained for the property's redevelopment, including but not limited to parking, landscaping, and lighting. All existing buildings remained with no new buildings being constructed.</p> <p>Along with the DPR, two variances were approved. VAR 06-07 (A) allowed for two primary uses on a single lot. VAR 06-07 (B)</p>



	allowed the interior drive to remain the same without having to meet the standards of a public road.
<b>H. STAFF COMMENTS</b>	<p>The petitioner is requesting approval of a Special Exception to allow for a car wash located within an I-2 District <i>and</i> within Tier Two of the US HWY 36 Overlay District.</p> <p>A car wash is only permitted within an I-2 zoning district <i>and/or</i> Tier Two of the US HWY 36 Overlay Zoning District by Special Exception per Table 27-1 Permitted Use Table.</p> <p>Elite Car Wash is a hand car wash business which is seeking to operate within Unit C of 8403 E US Highway 36, located within The Gatherings commercial/light industrial complex. The building is located off of US 36, behind the multi-tenant commercial complex. It is the western-most building on subject site. The subject unit contains 1,651 square feet of space with access from the rear of the building.</p> <p>The petitioner notes that the proposed use is different from that of the other car washes throughout the US 36 corridor. It is small and operates more as a personal service establishment. Customers are serviced by appointment only and all work is conducted within the confines of the warehouse building, with no outdoor storage. The petitioner states that the business can process a maximum of fifteen cars per day.</p> <p>The petitioner has been operating a car wash at this location. Only after the petitioner applied for a sign permit, was the town informed of this non-conformity, thus prompting application of this petition.</p> <p>Staff believes this use to be appropriate for this development and compatible with the surrounding uses, subject to staff's recommendation.</p>
<b>I. STATUTORY FINDINGS</b>	<p>The Board of Zoning Appeals shall approve, conditionally approve or deny Special Exceptions. A Special Exception may be approved under IC 36-7-4-918.2 only upon a determination in writing that it meets the criteria adopted in the community's local zoning ordinance – see Avon Zoning Ordinance, Section 4-4 (4) for the criteria, listed below:</p>





**Note: the first 6 criteria must be met; the last 3 are additional items the Board may consider**

**Criterion 1: Is the requested use listed as a special exception for the specific zoning district involved as specified?**

*"Yes."*

**Staff Concurs with the Petitioner's assertion on the Finding. The subject site is located within an I-2 zoning district *and* is contained within Tier 2 of the US HWY 36 Overlay District. Both I-2 *and* Tier 2 of the HWY 36 Overlay District require a special exception for Car Wash uses.**

**Criterion 2: Will the operation of the use be detrimental to or endanger the public's health, safety, or general welfare:**

*"No. Routine biodegradable detergents used, like other approved car washes in Avon."*

**Staff concurs with the petitioner's assertion concerning the finding.**

**Criterion 3: Will the proposed use be injurious to the use and enjoyment of other properties in the immediate vicinity or substantially diminish or impair property values within the specific zoning district?**

*"No. The use will occur completely inside the rear warehouse space of an existing Industrial Building."*

**Staff concurs with the petitioner's assertion concerning the finding.**

**Criterion 4: Will the proposed use be served adequately by essential public facilities and services such as highways,**





streets, police and fire protection, drainage structures, refuse disposal, water, sewer, and schools?

*"Yes, as have the past tenants, and other current tenants in this building."*

Staff concurs with the Petitioner's assertion concerning this finding.

**Criterion 5: Will the use create excessive additional requirements at public expense for public facilities and services, or be detrimental to the economic welfare of the community or result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance?**

*"No. This is a small, hand wash operation. Small in scale compared to other large car wash operations in Avon. "*

Staff concurs with the Petitioner's assertion concerning this finding.

**Criterion 6: Have there been previous appeals to the BZA for this property within the last year?**

*"No."*

Staff concurs with the Petitioner's assertion concerning this finding.

*In addition to the above criteria, the Board may consider the following:*

**Criterion 7: Does the proposed Special Exception meet the requirements and standards of this ordinance and its**



**relationship and compatibility to adjacent properties and neighborhoods?**

*"Yes. It is a low intensity use that can work within the existing industrial flex space with no changes needed to the site. Arguably, it is a lesser intensity use than the previous tenant."*

**Staff concurs with the petitioner's assertion concerning this finding. Staff finds there to be adequate parking to serve the proposed use and finds it compatible with the surrounding uses.**

**Criterion 8: Does the proposed Special Exception make adequate provision for public services, provide adequate control over vehicular traffic, provide for and protect designated common open space and further the amenities of light and air, recreation and visual enjoyment?**

*"Yes. The business will utilize existing infrastructure within the multi-tenant facility, as have past and current tenants."*

**Staff concurs with the Petitioner's assertion concerning this finding.**

**Criterion 9: Is the proposed Special Exception in accordance with the general objectives of the Comprehensive Plan?**

*"Yes. It is located in a mixed use complex, and mixed use corridor. Furthermore, it is small compared to other car washes along the corridor, and hidden from view. And the plan seeks to attract small business entrepreneurs."*

**Staff concurs with the Petitioner's assertion concerning this finding. The Future Land Use Cluster Map of the Comprehensive Plan designates this area as "Area Retail". Staff believes that the proposed use is consistent with that designation.**





## Exhibit A - Location Map



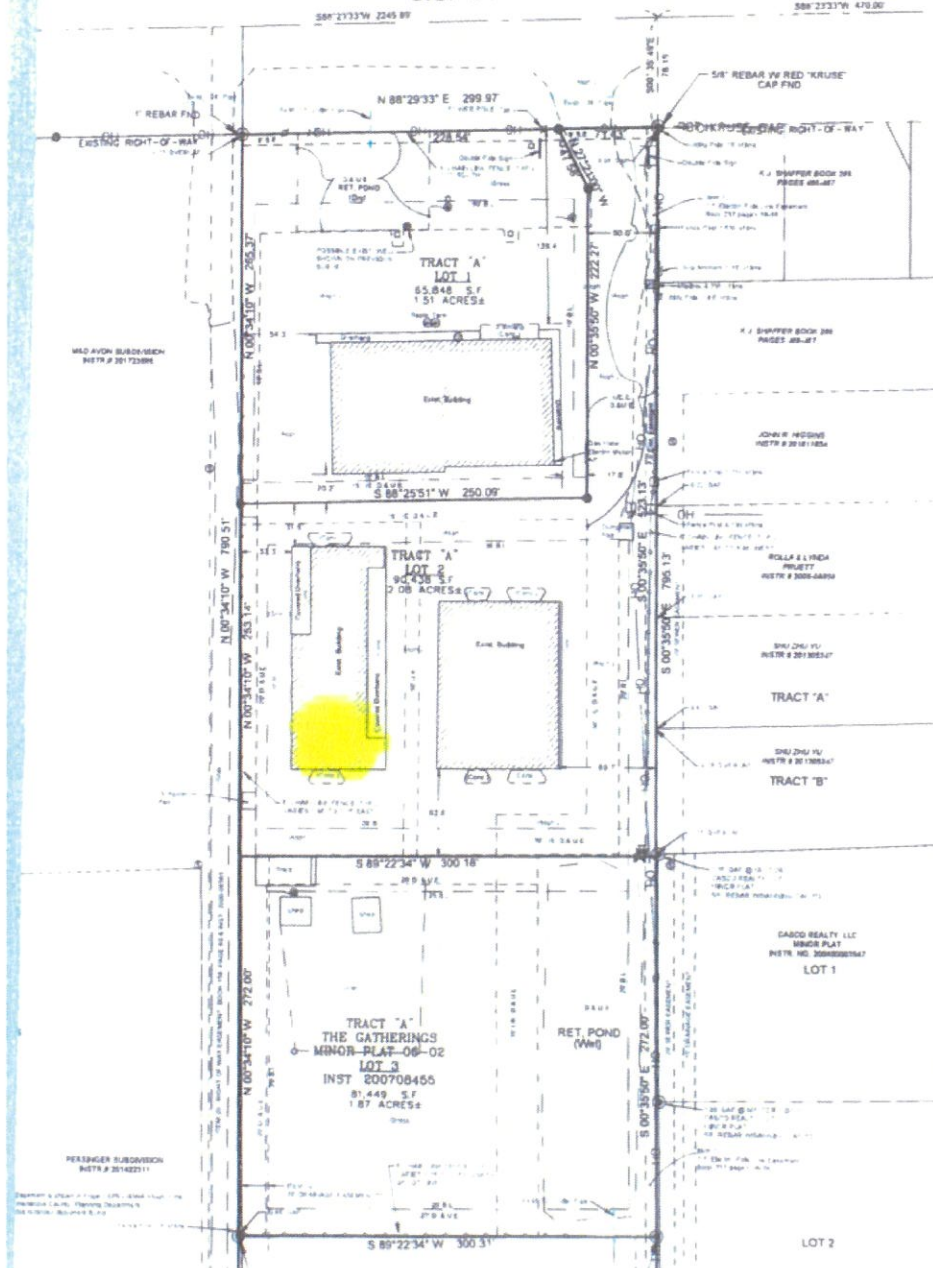


## Exhibit B - Site Map

# ALT/NSPS LAND TITLE SURVEY

A PART OF THE NORTHWEST QUARTER OF SECTION 12  
HIP 15 NORTH, RANGE 1 EAST OF THE SECOND PRINCIPAL MERID  
OF AVON, WASHINGTON TOWNSHIP, HENDRICKS COUNTY, INDIANA

U.S. 36







### Exhibit C – Floor Plan

